1980

c 389 Private Hospitals Act

Ontario
CHAPTER 389
Private Hospitals Act

1. In this Act,

(a) "applicant" means applicant or applicants, as the case may be;

(b) "house" means a building or other structure, whether permanent or temporary, intended for human habitation and, where two or more houses are situate on adjacent pieces of land and are occupied by the same person, they shall be deemed to constitute a single house for the purposes of this Act;

(c) "inspector" means an officer of the Ministry designated under this Act as an inspector;

(d) "Minister" means the Minister of Health;

(e) "Ministry" means the Ministry of Health;

(f) "municipality" means a metropolitan municipality, city, separated town, or county, except that in a territorial district it means a city, town, village, township or improvement district;

(g) "patient" means a person admitted to a private hospital for the purpose of treatment;

(h) "private hospital" means a house in which four or more patients are or may be admitted for treatment, other than,

(i) a hospital or other establishment or institution supported in whole or in part by provincial aid,

(ii) an institution in respect of which a licence under the Private Sanitaria Act is in force, R.S.O. 1980, c. 391

(iii) an institution for the reclamation and cure of habitual drunkards established under the Municipal Act, R.S.O. 1980, c. 302
(iv) a children's residence registered under the Children's Residential Services Act,

(v) a lodging house licensed under a municipal by-law;

(i) "regulations" means the regulations made under this Act;

(j) "resident" means actually resident in a municipality for a period of three months within the six months next prior to admission to a private hospital;

(k) "superintendent" means the person who has for the time being the direct and actual superintendence and charge of a private hospital;

(l) "territorial district" means any of the territorial districts set forth in the Territorial Division Act;

(m) "territory without municipal organization" means those parts of Ontario that are without municipal organization, including Indian reservations and provincial parks, but not including property of the Government of Canada used for the purposes of national defence installations, camps or stations;

(n) "treatment" means the maintenance, observation, nursing and medical care and supervision of a patient.

R.S.O. 1970, c. 361, s. 1; 1972, c. 1, s. 1; 1973, c. 123, s. 1 (1).

2. The Minister shall administer and enforce this Act and the regulations. R.S.O. 1970, c. 361, s. 2.

3.—(1) No person shall use a house as a private hospital except under the authority of a licence issued under this Act before the 29th day of October, 1973, or a renewal of such a licence.

(2) Where a house is used as a private hospital in contravention of subsection (1), the occupier and each person concerned in the management or operation of the house or in the admission thereto or treatment therein of any patient are severally guilty of an offence and on conviction are each liable to a fine of not less than $100 and not more than $500 for each day upon which such contravention occurs or continues. 1973, c. 123, s. 2.

4.—(1) No person shall use the term "hospital" in connection with a house unless such use is duly authorized.
(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than $500. R.S.O. 1970, c. 361, s. 4.

5. No application under the Corporations Act or the Business Corporations Act to incorporate a corporation having as its object the operation of a private hospital shall be proceeded with. R.S.O. 1970, c. 361, s. 5 (2); 1973, c. 123, s. 3 (2).

6. — (1) Where subsection 3 (1) or section 22 is contravened, notwithstanding any other remedy or any penalty imposed, the Minister may apply to a judge of the Supreme Court for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified in the order that, in the opinion of the court, will or will likely result in the continuation or repetition of the contravention by the person committing the contravention and the judge may make the order and, where the judge considers it proper, may postpone the operation of the order for a period of not more than thirty days after the day of the making of the order to permit patients in the house to find alternative accommodation and vacate the premises, and the order may be enforced in the same manner as any other order or judgment of the Supreme Court.

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1973, c. 123, s. 4, revised.

7. — (1) Every licence is renewable annually in accordance with the regulations.

(2) The fee for renewal of a licence is $10.

(3) The Minister may refuse the licence of any private hospital if it was operated in a manner that contravened any provision of this Act or the regulations.

(4) Where the licensee is a corporation, the Minister may refuse to renew its licence if the Minister is not satisfied as to the character of each director and officer of the corporation and as to his fitness to direct, manage or be associated with the operation of the private hospital.

(5) When a licence is renewed, the Minister shall determine the class of hospital that may be operated and may change the class from that for which the hospital was licensed in the preceding year.

(6) Where the renewal of a licence has been refused or where a licence has been revoked, the licence shall not be
displayed in a manner that may induce a person to believe that it is still in force, and every person who so displays a licence is guilty of an offence and on conviction is liable to a fine of not less than $25 and not more than $500. R.S.O. 1970, c. 361, s. 7.

8. Where a licence has been issued to two or more persons jointly and any of such persons dies leaving the other or others surviving during the currency of the licence, the licence remains in force and has the same effect as if it had been issued to the survivor or survivors. R.S.O. 1970, c. 361, s. 8.

9. A licence under this Act is transferable only where the proposed transferee obtains the prior written consent of the Minister to the transfer, but the Minister shall not grant his consent to the transfer until he is satisfied by such evidence as he may require as to the good character and the fitness of the transferee to manage and operate the private hospital. 1973, c. 123, s. 5.

10.—(1) Where the licensee of a private hospital is a corporation with share capital, no share thereof shall be transferred without the prior approval of the Minister.

(2) Where an application for the approval of the Minister to the transfer of shares under subsection (1) is refused, the applicant may appeal from the decision to the Divisional Court at any time within thirty days from his receipt of notice of the refusal, and the court may, upon the hearing of the appeal, make such order as to the transfer of the shares or confirming the Minister’s decision and as to costs as the court considers just.

(3) The appeal shall be by notice served upon the Minister, and shall be founded upon a copy of the application, a copy of any proceedings before the Minister, a copy of the decision of the Minister and upon any other material the court considers relevant. R.S.O. 1970, c. 361, s. 10, revised.

11.—(1) When a licensee or the sole surviving licensee dies,

(a) the person to whom the private hospital passes may apply to have the licence transferred to him, but the Minister shall not grant his consent to the transfer until he is satisfied by such evidence as he may require as to the good character and the fitness of the transferee to manage and operate the private hospital; or

(b) the personal representative of the deceased licensee may apply to the Minister for a temporary licence.
to permit the private hospital to continue in operation under the management of the personal representative for such period of time as in the opinion of the Minister is sufficient to allow the personal representative to dispose of the private hospital and to allow other accommodation to be provided for the patients in the hospital. R.S.O. 1970, c. 361, s. 11 (1); 1973, c. 123, s. 6.

(2) Unless an application is made under subsection (1) within three months after the death of the licensee or of the sole surviving licensee, the licence is revoked. R.S.O. 1970, c. 361, s. 11 (2).

12.—(1) A licence may at any time be revoked by the Minister,

(a) if the licensee has made default for two months in paying the annual licence fee;

(b) if the licensee or superintendent has been convicted of an offence against this Act or of any offence punishable by imprisonment; or

(c) if, in the opinion of the Minister,

(i) the premises of the private hospital are unclean, unsanitary or without proper fire protection,

(ii) the standard of patient care provided in the private hospital is inadequate,

(iii) the private hospital is managed or conducted in a manner contrary to this Act or the regulations, or

(iv) the private hospital is managed or conducted in such a manner that the revocation of the licence is required in the public interest.

(2) Before a licence is revoked, the Minister shall give notice to the licensee or superintendent of the ground or grounds on which it is proposed to revoke the licence and shall afford to him an opportunity of showing cause why the licence should not be revoked. R.S.O. 1970, c. 361, s. 12.

13.—(1) Where the Minister proposes to refuse to renew or consent to the transfer of a licence or proposes to revoke a licence under this Act, he shall serve notice of his proposal, together with written reasons therefor, on the licensee.
(2) A notice under subsection (1) shall inform the licensee that he is entitled to a hearing by the Health Facilities Appeal Board under the *Ambulance Act* if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Minister and the Board and he may so require such a hearing.

(3) Where a licensee does not require a hearing by the Health Facilities Appeal Board in accordance with subsection (2), the Minister may carry out the proposal stated in his notice under subsection (1).

(4) Where a licensee requires a hearing by the Health Facilities Appeal Board in accordance with subsection (2), the Board shall appoint a time for and hold the hearing and, on the application of the Minister at the hearing, may by order direct the Minister to carry out his proposal or refrain from carrying out his proposal and to take such action as the Board considers the Minister ought to take in accordance with this Act and the regulations, and for such purposes the Board may substitute its opinion for that of the Minister.

(5) The Health Facilities Appeal Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are *prima facie* grounds for granting relief to the licensee pursuant to a hearing and that there are reasonable grounds for applying for the extension and the Board may give such directions as it considers proper consequent upon the extension.

(6) Where, within the time prescribed therefor or, if no time is prescribed, before the expiry of his licence, a licensee has applied for renewal of his licence and paid the prescribed fee, his licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) where he is served with notice that the Minister proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing by the Board has expired and, where a hearing is required, until the Board has made its decision. 1973, c. 123, s. 7, *part.*

14.—(1) The Minister or licensee who has required the hearing and such other persons as the Health Facilities...
Appeal Board may specify are parties to proceedings before the Board under this Act.

(2) Notice of a hearing under section 13 shall afford the licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the renewal, retention or transfer of the licence.

(3) A licensee who is a party to proceedings under subsection (1) shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Members of the Health Facilities Appeal Board holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(6) The findings of fact of the Board pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the Statutory Powers Procedure Act.

R.S.O. 1980, c. 484

(7) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(8) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to him by the Board within a reasonable time after the matter in issue has been finally determined. 1973, c. 123, s. 7, part.
15.—(1) Any party to the proceedings before the Health Facilities Appeal Board may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

(2) Where any party appeals from a decision or order of the Board, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board’s record, shall constitute the record in the appeal.

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board and may exercise all powers of the Board to direct the Minister to take any action which the Board may direct him to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Minister or of the Board, or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper. 1973, c. 123, s. 7, part.

16. Except where otherwise provided, any notice required by this Act to be served may be served personally or by registered mail addressed to the person to whom notice is to be given at his latest known address and, where notice is served by registered mail, the service shall be deemed to have been made on the third day after the day of mailing unless the person to whom notice is given establishes that he did not, acting in good faith, through absence, accident, illness or other cause beyond his control receive the notice until a later date. 1973, c. 123, s. 7, part.

17. Every private hospital has power to carry on its undertaking as is authorized by any general or special Act under which it was created, established, incorporated or empowered so to do, but, where the provisions of any general or special Act conflict with the provisions of this Act or the regulations, the provisions of this Act and the regulations prevail. R.S.O. 1970, c. 361, s. 13.

18. The fiscal year of every private hospital shall commence on the 1st day of January of a year and end on the 31st day of December of the same year. R.S.O. 1970, c. 361, s. 14.

19.—(1) Every private hospital shall have at all times a superintendent who may be the licensee himself, if qualified under this section, and shall be either a legally qualified
(2) No person other than a licensee shall be appointed as the superintendent of a private hospital until his name and qualifications have been furnished to the Minister and the Minister has approved of the appointment.

(3) During the temporary absence, illness or incapacity of the superintendent, the licensee may, without giving notice to the Minister, appoint as acting superintendent any other person qualified in accordance with this section, and every person so appointed shall, while he so acts, be deemed for the purpose of this Act to be the superintendent, but he shall not so act, whether under the same or successive appointments, for a longer continuous period than four weeks.

(4) Where at any time a private hospital is used as such while it has no duly qualified superintendent, the licensee is guilty of an offence and on conviction is liable to a fine of not more than $25 for every day during which it is so used. R.S.O. 1970, c. 361, s. 20.

20. No person shall be employed as an intern in a private hospital unless he is registered under Part III of the Health Disciplines Act. R.S.O. 1980, c. 196

21.—(1) The licensee of every private hospital shall keep or cause to be kept a register of patients in which shall be entered,

(a) the name, age, sex and usual place of residence of each patient, and the date of his admission to the hospital;

(b) each patient's diagnosis;

(c) the name of the medical practitioner, if any, attending each patient;

(d) the date on which each patient leaves the hospital and, if transferred to another hospital, the name of the other hospital or, in the event of the death of a patient in the hospital, the date of his death; and

(e) such other particulars as are prescribed by the Minister.

(2) The particulars required by subsection (1) shall be entered in the register as soon as practicable after the occurrence of the act or event to which the entry relates.
(3) Every person who knowingly makes an untrue entry in a register of patients is guilty of an offence and on conviction is liable to a fine of not more than $200.

(4) Every licensee who fails to make or causes to be made any entry in the register required by subsection (1) to be made therein is guilty of an offence and on conviction is liable to a fine of not more than $50. R.S.O. 1970, c. 361, s. 17.

22.—(1) No person shall construct, add to or enlarge the patient bed capacity of any house that is or that is intended to be used as a private hospital.

(2) No person shall alter or renovate a house that is used as a private hospital unless he has first obtained the approval in writing of the Minister for the alteration or renovation.

(3) The Minister may require an applicant for an approval under subsection (2) to submit to the Minister any plans, specifications and other information related to the alteration or renovation and, subject to subsection (4), the Minister may issue his approval in writing for the alteration or renovation.

(4) The Minister may refuse to issue an approval under subsection (2) where he considers that it is not in the public interest to issue the approval or may issue his approval subject to such terms and conditions as he considers are in the public interest.

(5) In considering whether it is in the public interest under subsection (4) to refuse to issue an approval or to issue an approval subject to terms and conditions, the Minister shall take into account,

(a) whether the proposed alteration or renovation will or will likely be prejudicial to the health, safety or welfare of the patients who are receiving or are likely to receive services or treatment in the private hospital; and

(b) whether the proposed alteration or renovation will or will likely result in a contravention of this Act or the regulations or of any other Act or regulation that applies to a private hospital or of any municipal by-law related to the proposed alteration or renovation.

(6) The number of patients that is permitted by the licence issued under this Act in respect of a private hospital
shall not be increased as the result of any alteration or renovation of the house that is used as the private hospital. 1973, c. 123, s. 8.

23. —(1) The Minister may designate one or more officers of the Inspector Ministry to be inspectors for the purposes of this Act and the regulations.

(2) Every private hospital and its registers and records shall at all times be open to inspection by an inspector.

(3) Where an inspector believes or suspects that any house is used as a private hospital without being licensed, he may at any time and from time to time by himself enter and inspect such house and every part thereof, and every person who prevents or obstructs or attempts to prevent or obstruct any such entry or inspection is guilty of an offence and on conviction is liable to a fine of not more than $200. R.S.O. 1970, c. 361, s. 19; 1972, c. 1, s. 1.

24. —(1) A private hospital shall not be used for any purpose other than the purposes in respect of which the licence is issued and purposes incidental thereto.

(2) Where a private hospital is used in any manner contrary to subsection (1), the licensee and the superintendent are severally guilty of an offence and on conviction are each liable to a fine of not more than $25 for every day during which it is so used. R.S.O. 1970, c. 361, s. 20.

25. Where a private hospital is used at any time for the treatment of a greater number of patients than is permitted by the licence, except in the case of emergency, or where a patient of a class not permitted by the licence is admitted, the licensee and the superintendent are severally guilty of an offence and on conviction are each liable to a fine of not more than $25 for every day during which it is so used or the patient is so admitted. R.S.O. 1970, c. 361, s. 21.

26. Every person who contravenes any provision of this Act or the regulations, where a penalty is not otherwise provided, is guilty of an offence and on conviction is liable to a fine of not less than $25 and not more than $500. R.S.O. 1970, c. 361, s. 22.

27. —(1) In a prosecution for an offence under this Act, the burden of proving that a person residing in a house and there receiving medical treatment is not a patient within the meaning of this Act is upon the person charged.
(2) In a prosecution for an offence under this Act, the burden of proving that a licence is in force and its terms and that a person apparently having the charge, control or management of a private hospital is not the superintendent thereof within the meaning of this Act is upon the person charged. R.S.O. 1970, c. 361, s. 23.

28. Any municipality, with the approval of the Minister, may enter into an annual agreement with the licensee of a private hospital respecting the admission to and treatment in the private hospital of indigent persons and dependants of indigent persons who are resident in such municipality, and in such case the liability of the municipality to the private hospital shall be determined according to such agreement, and the Minister may terminate any such agreement at any time by thirty days notice in writing to the parties thereto. R.S.O. 1970, c. 361, s. 24.

29.—(1) Upon the payment by a municipality of any account rendered to it by a private hospital for the treatment of a patient under the terms of an agreement entered into under section 28, such municipality may recover from the patient or, in the event of his death, from his estate or, in the case of a dependant, from any person liable in law for such dependant the amount of the payment so made; and such amount may be recovered as a debt in any court of competent jurisdiction.

(2) The right of a municipality under subsection (1) to recover any payment made by it to a private hospital commences the day after the patient is discharged from the hospital or dies in the hospital and does not include the right while the patient is in hospital to take any part of the pension received by the patient under the Old Age Security Act (Canada) or received under that Act by the person whose dependant the patient is.

(3) The right of a municipality under subsection (1) to recover any payment made by it to a private hospital ceases one year after the discharge of the patient from the hospital or his death in the hospital. R.S.O. 1970, c. 361, s. 25.

30.—(1) Where a patient in a private hospital is an indigent person or a dependant of an indigent person and has resided in territory without municipal organization for a period of three months within the period of six months next prior to his admission to the private hospital, the Ministry, on certification by the regional welfare administrator, shall pay the private hospital at the rate of $6.50 for each day the patient receives treatment in the hospital.
(2) Where a private hospital receives payment under subsection (1) for an indigent person, the Minister shall pay to the private hospital an amount in respect of insured services received by the indigent person equal to the difference between the amount paid by the Ministry and the per diem rate established for the hospital by the Minister. R.S.O. 1970, c. 361, s. 26; 1972, c. 1, s. 1.

31.—(1) Where a patient in a private hospital is an indigent person or a dependant of an indigent person and is declared by the attending physician not to require continued medical and skilled nursing care in a private hospital but requires only custodial care, the municipality in which such person was resident at the time of admission is liable to the private hospital for payment of the per diem contract rate, established for that private hospital by the Minister, from the twenty-first day after the day on which notice that the patient is declared to require only custodial care has been sent by the superintendent of the private hospital by registered mail to the clerk of the municipality until such patient leaves the private hospital.

(2) A municipality that is liable to a private hospital for the payment of the per diem contract rate under subsection (1) shall make such payment to the private hospital at least quarterly.

(3) Where the person referred to in subsection (1) was a resident of territory without municipal organization, the Province of Ontario shall pay the per diem contract rate in accordance with subsection (1).

(4) For the purposes of this section, “indigent person” means a person who is receiving assistance from a municipality or is declared eligible by the Ministry of Community and Social Services to receive such assistance, or who has no place of abode to which he may go from the private hospital. R.S.O. 1970, c. 361, s. 27; 1972, c. 1, s. 19 (3).

32.—(1) The superintendent of a private hospital shall be deemed to be the occupier of the house for the purpose of giving notice under the Public Health Act of any patient found or suspected to be suffering from any communicable disease.

(2) The superintendent of a private hospital shall be deemed to be the occupier thereof for the purpose of giving notice or information under the Vital Statistics Act of the death of any person or of the birth of any child in the hospital. R.S.O. 1970, c. 361, s. 28.
(1) The Lieutenant Governor in Council may make such regulations with respect to private hospitals as are considered necessary for,

(a) their construction, establishment, licensing, alteration, safety, equipment, maintenance and repair;

(b) their classifications, grades and standards;

(c) their inspection, control, government, management, conduct, operation and use;

(d) their superintendents, staffs, officers, servants and employees and the powers and duties thereof;

(e) prescribing the powers and duties of inspectors;

(f) prescribing or restricting the type and amount of surgery, gynaecology or obstetrics that may be performed in any class of private hospital and the facilities and equipment that shall be provided for such purposes;

(g) the admission, treatment, care, conduct, discipline and discharge of patients, and for prohibiting the admission of any class of patients;

(h) the classification of patients and the rates and charges for patients;

(i) the records, books, accounting systems, audits, reports and returns to be made and kept;

(j) the establishment and operation of periodic medical audits of the work performed in private hospitals;

(k) prescribing the matters upon which by-laws must be passed by corporations that operate private hospitals;

(l) the reports and returns to be submitted to the Minister by private hospitals;

(m) defining words and terms used in this Act and the regulations for the purposes of this Act and the regulations;

(n) all matters affecting private hospitals.

(2) The Minister may from time to time declare all or any of the regulations to be in force with respect to all private hospitals or
any one or more private hospitals or classes thereof and for such time or times as the Minister considers expedient.  R.S.O. 1970, c. 361, s. 29.